negligence. *Martin* v. *Des Moines Light Co.*, 131 Ia. 724, 106 N. W. 359. In this sense the doctrine has no application to the facts of the principal case. Clearly a literal interpretation of the language of the Act sustains the court in limiting the scope of the expression to this latter meaning. Such, however, must have also been the intention of the legislature. For an earlier New York Act had been called unconstitutional because it established a relational liability without fault. *Ives* v. *South Buffalo Ry. Co.*, 201 N. Y. 271, 94 N. E. 431. And it was to avoid this result that the Massachusetts legislature inserted this optional common-law remedy. See *Opinion of Justices*, 209 Mass. 607, 610, 96 N. E. 308, 315; RUBINOW, SOCIAL INSURANCE, 175. Therefore, to hold that the optional common-law remedy likewise established a relational liability without fault would be to defeat the very purpose of the legislature in providing the option.

MORTGAGES — PRIORITIES — PRIORITY OF SUBSEQUENT CREDITORS OVER BONDHOLDERS. — A receiver was appointed for the defendant railroad, and subsequently the bondholders brought suit to foreclose. The plaintiff intervenes, claiming priority to the bondholders for certain claims out of the proceeds of the foreclosure sale, on the ground that they arose from services which the plaintiff, as a connecting carrier, was legally bound to render to the defendant. *Held*, that these claims do not take priority over the lien of the bondholders. *Chicago, etc. R. Co.* v. *United States, etc. Trust Co.*, 225 Fed. 940 (C. C. A., 8th Circ.).

Current expenses of a railroad have a claim on gross earnings prior to that of the bondholders, on the ground that the creditors relied on such earnings rather than on general credit. *Virginia, etc. Coal Co.* v. *Central R. & B. Co.*, 170 U. S. 355. But only when the income has been diverted from the payment of current expenses to the improvement of the property may such claims be satisfied out of the *corpus*, in preference to the bondholders. *Burnham* v. *Bowen*, 111 U. S. 776; *Southern Ry. Co.* v. *Carnegie Steel Co.*, 76 Fed. 492. See 18 HARV. L. REV. 605. It has been stated that an exception exists where the preservation of the business requires immediate payment. *Miltenberger* v. *Logansport Ry. Co.*, 106 U. S. 286, 311; see dissent in *Gregg* v. *Metropolitan Trust Co.*, 197 U. S. 183, 190. Although the courts in the later cases recognize this exception, their refusal to apply it shows its narrow limits. *Thomas* v. *Western Car Co.*, 149 U. S. 95; *Gregg* v. *Metropolitan Trust Co.*, *supra*. See *Kneeland* v. *American Loan & Trust Co.*, 136 U. S. 89, 98; *Lackawanna Iron & Coal Co.* v. *Farmers' Loan & Trust Co.*, 176 U. S. 298, 316. The plaintiff's claim in the principal case, therefore, suggests a new exception, which the court seems correct in denying. The plaintiff, having entered the business of a carrier voluntarily, can scarcely complain of the relational burdens it has thereby assumed, nor make such complaint the basis of a claim for a preference. Indeed, a preference to a common carrier has been held the less justified, because immediate payment is not necessary to secure continued service. *Carbon Fuel Co.* v. *Chicago, etc. R. Co.*, 202 Fed. 172.

MUNICIPAL CORPORATIONS — OFFICERS AND AGENTS — LIABILITY OF HIGHWAY CONTRACTOR FOR MISFEASANCE. — The defendant, a contractor working on county roads, negligently piled stones on the road without proper safeguards. The plaintiff sues for injuries to himself and team resulting therefrom. *Held*, that he may not recover. *Ockerman* v. *Woodward*, 178 S. W. 1100 (Ky.)

For a discussion of this case, see NOTES, p. 323.

NEGLIGENCE — DEFENSES — ILLEGAL CONDUCT OF THE PLAINTIFF. — A statute requires public officers to impound all cattle running at large in highways. MASS. R. L., c. 33, §§ 22, 23. The plaintiff's bull escaped into the highway and was there killed by the defendant's negligently driven street car.

Held, that the plaintiff can recover the value of the bull. *Carrington* v. *Worcester Consolidated St. Ry. Co.*, 109 N. E. 828 (Mass.).

Unlicensed automobiles are held in Massachusetts to be trespassers, and neither their owners nor persons riding in them can recover from negligent defendants. *Dudley* v. *Northampton St. Ry. Co.*, 202 Mass. 443, 89 N. E. 25; *Holden* v. *McGillicuddy*, 215 Mass. 563, 102 N. E. 923. See *Bourne* v. *Whitman*, 209 Mass. 155, 171, 95 N. E. 404, 408. See 28 HARV. L. REV. 505. But bulls are apparently less trespassers than automobiles, though the only offense of the machine is the failure of its owner to pay a license tax, while the bull's very presence is in effect prohibited by the positive requirement that he be taken up. Indeed, it has been expressly stated by the Massachusetts court that the presence of cattle in the highway under such a statute is unlawful. See *Leonard* v. *Doherty*, 174 Mass. 565, 570, 55 N. E. 461, 462. The distinction cannot be explained by a lenience toward cattle, for in Massachusetts cattle trespassing on private property render their owners liable. *Lyons* v. *Merrick*, 105 Mass. 71. And even where by decision or statute this is otherwise, cattle straying upon private property are nevertheless trespassers and have only the rights of such. *Beinhorn* v. *Griswold*, 27 Mont. 79, 69 Pac. 557; *Herold* v. *Meyers*, 20 Ia. 378. *Cf. Haughey* v. *Hart*, 62 Ia. 96, 17 N. W. 189. In many jurisdictions there is a duty of due care in active conduct owed to trespassers after their presence has come to the attention of the defendant. *Herrick* v. *Wixon*, 121 Mich. 384, 80 N. W. 117. In such jurisdictions, or in the absence of a rule holding an unlicensed automobile a trespasser as against lawful users of the highway, the decision in the principal case is right enough. *Smith* v. *St. Paul City Ry. Co.*, 79 Minn. 254, 82 N. W. 577. *Cf. Davies* v. *Mann*, 10 M. & W. 546. But where actually made it seems to show a tendency, previously noticed, to regard persons who use automobiles as in some way deserving of less consideration than the remainder of mankind. See 28 HARV. L. REV. 91.

PARENT AND CHILD — AGREEMENTS CONCERNING CUSTODY — LIABILITY OF PARENT. — A father who had delivered his infant child to the plaintiff under an agreement that the latter should keep it until it came of age, took the child back before that time arrived. *Held*, that the plaintiff can recover on a *quantum meruit* for services actually rendered. *Gordon* v. *Wyness*, 155 N. Y. Supp. 162.

In determining disputes as to the custody of children, the court acts as *parens patriae* and regards the welfare of the child as the controlling consideration. *Kelsey* v. *Green*, 69 Conn. 291, 37 Atl. 679. When the interests of the child will best be promoted by leaving it with its foster parent, the father will not be allowed to take it back. *Hussey* v. *Whiting*, 145 Ind. 580, 44 N. E. 639; *Peese* v. *Gellerman*, 51 Tex. Civ. App. 39, 110 S. W. 196; *Richards* v. *Collins*, 45 N. J. Eq. 283, 17 Atl. 831. However, when, as is usual, it is best for the child to have its father's care, his agreement to give the custody to another will not deprive him of the right to resume possession. *Wood* v. *Shaw*, 92 Kan. 70, 139 Pac. 1165. But if the agreement be regarded as valid, the father, when he rescinds it, must place the foster parent *in statu quo*. See WILLISTON'S WALD'S POLLOCK ON CONTRACTS, 337, 343. And even if, as most courts hold, the agreement is invalid, the case falls within the principle that one who performs services for another with the latter's assent, can recover their reasonable value. See WILLISTON'S WALD'S POLLOCK ON CONTRACTS, 11. Moreover, when a father fails to support his child, a stranger who supplies necessaries can recover from the father. *De Brauwere* v. *De Brauwere*, 203 N. Y. 460, 96 N. E. 722. Of course there can be no recovery by one who, when he conferred the benefit, intended it to be gratuitous. *Collyer* v. *Collyer*, 113 N. Y. 442, 21 N. E. 114; *Brown* v. *Tuttle*, 80 Me. 162. But in the